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In The

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1959

No. 602

CATHERINE LOUISE HARMS,
*Petitioner*

vs.

UNITED STATES OF AMERICA,
*Respondent*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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---

Catherine Louise Harms, your petitioner, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit, entered in the above entitled case on November 20, 1959.

## OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported at this time to your petitioner's knowledge and a copy is attached hereto. The opinion of the United States District Court for the Eastern District of Virginia is set out on page 6 of the appellant's appendix.

## JURISDICTION

The judgment of the Court of Appeals was entered on November 20, 1959, and the jurisdiction of this Court is invoked under the provisions of 28 U.S.C.A., § 1254 (1).

## QUESTIONS PRESENTED

WHETHER IT IS ESSENTIAL THAT THE GOVERNMENT SHOW THAT THE PETITIONER "KNOWINGLY CAUSED" THE GIRL TO TRAVEL BY INTERSTATE CARRIER.

## STATUTES AND REGULATIONS INVOLVED

18 U.S.C.A. § 2422 is as follows:

> "Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000.00 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 812."

## STATEMENT

Catherine Louise Harms, Ruth Twisdale Cousins and Connie Jean Day were named as defendants in a five count indictment charging violation of the white slave traffic act. Harms was charged on each of the first four counts with substantive offenses. The first count charged her with violation of 18 U.S.C.A. §2423, involving a minor female, Sandra G. Ulrich. The second count charged her with violation of 18 U.S.C.A. § 2422 alleging the inducement of Josephine Bruno. The third and fourth counts charged similar violations of 18 U.S.C.A. §2422 involving Linda Faye Ponder and a woman named therein as Anne Miller, respectively. The fifth count which named Cousins and Day along with Harms as defendants charged a conspiracy under 18 U.S.C.A. §371 to commit offenses in violation of the acts referred above to, covering the period from November, 1955, to the date of the indictment.

At the trial, the District Court acquitted the defendant, Harms, on the first count of the indictment on motion of the Government. At the conclusion of the Government's evidence, the District Court granted the defendant's motion for a judgment of acquittal as to the fourth count as well as the motion for acquittal of the third defendant, Connie Jean Day, on the fifth count. The jury returned a verdict of guilty on the 2nd, 3rd and fifth counts as to the defendant, Harms, and a verdict of guilty on the fifth count as to the defendant, Cousins. The District Court denied the defendants' motion to set aside the verdict and entered judgment of conviction of both defendants from which they appealed.

The Circuit Court of Appeals for the Fourth Circuit reversed the conviction of Cousins on the fifth count of the

indictment and found that Harms was improperly convicted on counts three and five of the indictment. The conviction of the second count, which is the only count remaining, alleging the inducement of Josephine Bruno was affirmed by the Circuit Court.

Josephine Bruno and Catherine Louise Harms had become acquainted in 1955 and from that time until January 1957 Bruno had worked as a prostitute for Harms in Norfolk on several occasions. In November, 1956, Bruno left Norfolk with the understanding that she would return to Norfolk to resume her work there in January. On January 2 or 3, 1957, Harms made a telephone call to Bruno in Atlantic City, New Jersey, and Bruno agreed to be in Norfolk to work on January 7, 1957.

The Government provided no evidence to show that Harms knew how Bruno was to come to Norfolk under what method or means. Harms sent no money and gave no instructions to Bruno; in fact, all that Harms did was to tell Bruno to come on back to Norfolk. Although, Bruno had been in Norfolk on many occasions, it was not shown how any previous trips to Norfolk were made; nor was it shown how Bruno could have traveled by some other means. The only thing that Harms told Bruno was that Harms had a place for Bruno to work. It was shown to have been common practice for Bruno to call or to be called to go to work in various areas. In fact, if Bruno had not been called by Harms to come to work, Bruno would have called someone in order to work somewhere. Appellant's appendix—pages 39 and 40. Thus, the only thing Harms told Bruno was that she had a place for Bruno to maintain her profession. It was admitted that the Government did not show that Harms knowingly caused Bruno to travel by interstate carrier.

## ARGUMENT

### INTRODUCTION

Under the statute now in question 28 U.S.C.A. § 2422, the following elements are set forth: that (1) whoever knowingly . . . induces . . . any woman . . . to go from one place to another in interstate . . . commerce . . ., (2) for the purpose . . . of prostitution . . . (3) and thereby *knowingly causes* such woman . . . to go and to be carried upon the line or route of any common carrier . . . in interstate . . . commerce. (italics added) For the purpose of this petition, it is admitted that Catherine Louise Harms knowingly induced Josephine Bruno to go from one place to another in interstate commerce for the purpose of prostitution. Thus, clearly, elements one and two of the statute were proven. It was shown that Bruno traveled by an interstate carrier. Thus, the question is whether the government must show that Harms "knowingly caused" Bruno to travel by common carrier in interstate commerce.

The Circuit Court of Appeals held, in an opinion by Field, District Judge, that since element one of the offense was shown, i. e., a knowing inducement to go from one place to another in interstate commerce, "It was not necessary for the Government to go further and attempt to show that Harms knowingly caused the victim to travel by common carrier either by direction or knowledge that the victim, Bruno, would use that mode of transportation." (Opinion p. 4) Thus, the Circuit Court held that an essential element of a criminal statute would not have to be proven. The opinion went on to state: "The knowing persuasion to make the interstate trip, of course, must be shown with some degree of particularity, but once the knowing per-

suasion has been shown, if the trip by interstate carrier follows, the offense is complete."

The Circuit Court based its decision on a case which had no facts and no stenographic report, *United States* v. *Saledonis*, 93 F 2d 302 (2d Cir. 1937), and even extended the obiter dictum of that case. This was an acceptance of Government's submitted proposition which was "that the defendant knowingly induces the 'victim' to travel interstate for an immoral purpose and *by that means* . . . causes the victim to travel by common carrier." (Appellee's Brief p. 8)

The District Court in its opinion states as follows speaking of the *Saledonis* case states:

> Undoubtedly it must be shown that the woman or girl did travel in interstate commerce as a passenger of a common carrier, but the knowledge and intent as to this phase of the case becomes unimportant as far as the accused is concerned.
>
> But for the *Saledonis* opinion, it is not unlikely that this Court would take a different view as to defendant's motion. Undoubtedly Saledonis ignores the plain words of the statute by construing the words "thereby knowingly" so as to relate back to the intent in the original inducement. (Appellant's Appendix p. 8)

It is apparent that through some use of sophistry that an essential statutory element is completely eliminated. Indeed the Circuit Court did not bother with sophistry but clearly held the word "knowingly" in the phrase "knowingly causes" to be superfluous, meaningless and effectively deleted it from the statute as drawn by Congress.

WHETHER IT IS ESSENTIAL THAT THE GOVERNMENT SHOW THAT THE PETITIONER "KNOWINGLY CAUSED" THE GIRL TO TRAVEL BY INTERSTATE CARRIER?

The "Mann Act" or the "White Slave Act" is a very broad statute. Section 2421, formerly 18 U.S.C.A. §398, deals with transportation generally and does not involve a common carrier specifically nor require transportation by common carrier. *Wilson* v. *United States* 232 U.S. 563 (1914). Section 2422 formerly 18 U.S.C. §399, deals with transportation by a common carrier. The statutes differ in requirements. Thus, it has been held and generally followed that Section 2421 and Section 2422 are separate and distinct offenses and that one transaction can give rise to a violation of both sections, both of which can be punished separately as distinct crimes. *Wagner* v. *United States*, 171 F2d 354, 364 (5th Cir. 1948) *cert. den.* 337 U. S. 944.

There are several distinctions between Section 2421 and Section 2422 and for the sake of clarity they are set out side by side as follows:

§2421. *Transportation generally*

Whoever knowingly transports in interstate or foreign commerce or in the District of Columbia or in any Territory or Possession of the United States, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice, or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or

Whoever knowingly procures or obtains any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice, or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—

Shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 812, amended May 24, 1949, c. 139, §47, 63 Stat. 96.

§2422. *Coercion or enticement of female*

Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both. June 25, 1948, c. 645, 62 Stat. 812.

Under Section 2421 there must be more than a mere inducement or enticement. It is essential that greater persuasion or coercion be shown. *LaPage* v. *United States*, 146 F2d. 536 (8th Cir. 1945). Moreover, under Section 2421, the transportation need not be by common carrier but can be by private vehicle. *Wilson* vs. *United States, supra; Sloan* vs. *United States*, 287 Fed. 91 (8th Cir. 1923). However, under Section 2422 transportation by automobile is not punishable. *Alpert* vs. *United States*, 12 F2d 352 (2d Cir. 1926).

From a perusal of both sections of the code, it can be seen that there are other distinctions in the statutes. The final clause of Section 2421 provides ". . . whereby any such woman or girl shall be transported in interstate or foreign commerce, or in the District of Columbia or any Territory or Possession of the United States—". Whereas, the final clause of the statute in question, Section 2422, provides ". . . and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States . . .". It can be seen that in one section the plain word "whereby" is used, and in the section in question the words "thereby knowingly causes" are used. The difference in the wording of the statutes, standing alone, is sufficient to sustain the petitioner's position.

The following construction was placed upon Section 2422 by the Circuit Court: "The knowing persuasion to make the interstate trip, of course, must be shown with some degree of particularity, but once the knowing persuasion has been shown, if the trip by interstate carrier follows, the offense is complete." (Opinion p. 4). This con-

struction makes Section 2422 read ". . . and thereby such woman or girl is carried or transported as a passenger upon the line or route of any common carrier, etc. . . ." instead of "and thereby knowingly causes such woman or girl, etc." Thus the judiciary has effectively legislated. Congress used particular words to convey particular meanings, which are ignored.

In construing a statute, one of the most well accepted propositions of law is that cited in *LaPage* vs. *U.S.* 146 F2d 536, 538 (8th Cir. 1945), where they were discussing the White Slave Act:

> In construing this provision of the two sections we started with the rule that a statute should be construed so to give effect to all of its language.[3]
>
> [3] In Ex parte Public National Bank of New York 278 U.S. 101, 104, 49 S. Ct. 43,44,73 L. Ed. 202 is stated: "No rule of statutory construction has been more definitely stated or more often repeated than the cardinal rule that significance and effect shall, if possible be accorded to every word. As early as Bacon's Abridgement, section 2, it was said that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or work shall be superfluous, void or insignificant'. Washington Market Company vs. Hoffman, 101 U.S. 112, 115, 25 L. Ed. 782".

This rule is so strong in penal statute that in the case of *Harrison* vs. *Vose*, 50 U.S. 396, 9 Howe 372, 378, there was a question concerning the meaning of the word "arrival". The Court stated "In the construction of a penal Statute, it is well settled, also, that all reasonable doubts

concerning its meaning ought to operate in favor of the respondent". Accordingly the court felt that there was a doubt in the meaning of the word "arrival" and construed the doubt in favor of the defendant and directed his acquittal. Therefore, if there is any doubt concerning the word "knowingly", this doubt must be construed in the defendant's favor.

There can be no question that any doubts in the construction or application of a criminal statute should be resolved in favor of the defendant. *Bell* vs. *United States*, 349 U.S. 81 (1955).

How there can be any doubt concerning the interpretation of Section 2422 is beyond the undersigned's comprehension. A plain reading of the statute would require that knowledge be proven. Indeed it has been only recently that any other construction was plausible. In no reported case under Section 2422, to the undersigned's knowledge, have the facts failed to establish that the defendant "knowingly caused" the girl to travel by interstate carrier. The government was unable to cite one to either the District Court or to the Circuit Court. Either money, agency or direction has always been present as evidence against the defendant. In fact, in earlier cases it was urged that the forerunner of Section 2421, not the section in question, required the government to show that the defendants either directed or knew how the victims were to travel interstate, whether in a private vehicle or through a common carrier. Thus in *Wilson* vs. *United States*, 232 U.S. 563, 566 (1914), the following is stated:

> There were numerous counts in the indictment, and a general verdict of guilty. The substance of the charge was the defendants caused and procured two girls to

be transported in interstate commerce from Milwaukee, Wisconsin, to Chicago, Illinois, for the purpose of prostitution. There was also a count charging a conspiracy to commit the same offense. The theory of the Government, sufficiently stated in the indictment and supported by evidence at the trial, was that in pursuance of an understanding between defendants and a man named Corder, they gave him eleven dollars in money, with instructions to proceed from Chicago to Milwaukee, induce one or both of the girls to return with him to Chicago, paying their transportation and other expenses out of the eleven dollars, and bring them to a house of prostitution in the latter city kept by the defendants; and that Corder carried out these instructions to the letter, bringing both girls over an interstate electric railway line and escorting them to defendants' house for the purpose of prostitution.

Of the questions of law that are raised, only the following seem to require mention:

1. It is insisted that the offense was not fully proved because there was nothing to show that defendants either directed or knew how the girls were to come from Milwaukee to Chicago, whether in a private vehicle or through the instrumentality of a common carrier. But, in our opinion, in order to constitute an offense under the act it is not essential that the transportation be by common carrier. The statute reads: "That any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, . . . any woman or girl for the purpose of prostitution or debauchery, or for any other

immoral purpose, . . . or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, . . . in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, . . . *whereby any such woman or girl shall be transported in interstate or foreign commerce*, . . . shall be deemed guilty of a felony.", etc.

The prohibition is not in terms confined to transportation by common carrier, nor need such a limitation be implied in order to sustain the constitutionality of the enactment. As has already been decided, it has the quality of a police regulation, although enacted in the exercise of the power to regulate interstate commerce (Hoke v. United States, 227 U.S. 308, 323, Gloucester Ferry Co. v. Pennsylvania, 114 U.S. 196, 215); and since this power is complete in itself, it was discretionary with Congress whether the prohibition should be extended to transportation by others than common carriers.

The contention that defendants were not within the prohibition of the act because they did not control or instruct Corder in the choice of means of conveyance is not worthy of serious consideration. According to the Government's evidence, Corder was employed by defendants as their agent, and furnished by them with money sufficient for the expenses of the transportation, but without definite instructions as to what mode should be employed. A natural inference was that he

> should decide upon the mode and select the route; and that such selection was within the scope of his agency (italics added).

In the case of *Hoke* v. *United States*, 327 U. S. 308, 324 (1913), the opinion stated where the defendant urged that "The evidence does not show that the defendants or either of them induced, etc., the women to become passengers in interstate commerce." The Court went on to state: "The particulars are recited wherein it is contended that the evidence is deficient. It was for the jury to determine . . . etc." Thus, it was always assumed that the government must show knowledge or direction on the part of defendant of the mode of travel employed by the victim.

The basis for the government's position is the case of *United States* v. *Saledonis*, 93 F2d 302, 304 (2d Cir. 1937), wherein the following statement was made:

> It is also suggested that there must be some direct act showing an intent on the part of the inducer that the transportation shall be by common carrier. This section does not say so, but plainly says that one who induces and who shall "thereby knowingly cause" interstate commerce by common carrier is guilty of the offense, if such transportation follows. An affirmative directive act is not involved. The inducement in and of itself, without consideration of intent and with no further direct act, is the moving cause of what follows. The inducement may be any offer sufficient to cause the woman to respond. The inducement sets in motion the successive acts that constitute the crime. It is unnecessary to show control of the medium of transportation by the inducer. It is sufficient if the accused

knows or should have known that interstate transportation by common carrier would reasonable result and if it does.

The Court in the excerpted case states at page 303: "THE TESTIMONY WAS NOT TAKEN STENOGRAPHICALLY AND THE RECORD ON APPEAL DOES NOT CONTAIN THE EVIDENCE ADDUCED AT TRIAL". What "direct act" the Court is speaking of is pure conjecture. How this abstract statement of law applied to the facts in that case is beyond the determination of the undersigned and it would appear that only speculation could resolve its application to the present case. How this could be an authority for the removal of a word from a statute perplexes your orator. The submitted proposition is in direct contravention to the cases. Moreover, Harms, the petitioner herein, could not have known that interstate transportation by common carrier would reasonably result. Harms called Bruno on January 2 or 3. The call was made from Norfolk, Virginia, to Atlantic City, New Jersey, a distance of less than 250 miles. Bruno came to Norfolk on January 7, 1959, a minimum of four days after the call. If Bruno had come one hour after the call, then Harms may have been charged with knowledge that Bruno must have used air transportation. But with over 68 million motor vehicles in the United States, *Statistical Abstract of the United States*, 1959, U. S. Dept. of Comm., Bureau of Census, p. 559, it would be reasonable to assume that Bruno would travel by automobile on the super highways between Norfolk and Atlantic City.

The government relies heavily on the interpretation placed on mail fraud statutes. It is submitted that the mail statute is not analogous since it encompasses a completely

different field relative to the conduct of ordinary business and the use of the mails necessarily entailing the customs and traditions in certain businesses. Thus, in *Moffit* v. *United States*, 154 F2d 402, 406 (10th Cir. 1946), it was stated in dismissing one of the counts against the defendant as follows:

> As pointed out above, when appellant caused the collection item to be sent through the mail he was chargeable with the use of the mail by the correspondent bank in notifying the Blackwell Bank that the item had been paid, because as a man of ordinary business experience he *knew* that it was established custom of the banks to use the mails for such purposes. It cannot, however, be said as a matter of law that it is a well-established custom of which men of ordinary business experience would have *knowledge*, that banks require in addition to the ordinary and customary notification further notification by telegram and further confirmation of telegram by mail.

Here a person of ordinary experience would expect that travel would be by private automobile. The ordinary course of travel in the United States is by automobile. This is so extensive that the railroads are going out of the passenger hauling business. The mail statute and the white slave statute are not analagous.

The question involved herein hinges on the interpretation of the statute. SHOULD THE STATUTE BE INTERPRETED AS IT IS WRITTEN OR SHOULD A WORD BE ELIMINATED?

The statute requires that the defendant knowingly induce the victim to travel interstate for an immoral purpose

and thereby knowingly cause the victim to travel by common carrier.

As was seen by the *Wilson* case, *supra*, where the statute provides merely transportation without limiting the type to common carrier then the defendant need not have the knowledge of the type of transportation whether by common carrier or private vehicle. It, therefore, would seem that the converse of this would be true, i.e. where the statute limits the transportation to a common carrier, then the knowledge of the type of transportation must be shown.

The word knowingly would normally require a perception of the facts requisite to makeup the crime. See *U. S.* vs. *Bianco* 103 F. Supp. 867 (W. D. Pa. 1952).

The government contended in the Circuit Court that the word "knowingly" as used before the word "causes" relates back to the inducement or persuasion. If this is so, why was the word knowingly also used before the word "persuade" in the statute? In fact, the government submitted to the Court below that the word "knowingly" can be omitted without changing the statute. The Circuit Court accepted the government's contention and omitted the word.

The Circuit Court by eliminating this word effectively violated the constitutional privilege against *ex post facto* laws. Every person is entitled to know in advance what acts will constitute a crime. It is not the court's duty to write law or omit words as is stated in *62 cases of Jam* v. *U. S.*, 340 U. S. 593 (1951):

> But our problem is to construe what Congress has written. After all, Congress expresses its purpose by

words. It is for us to ascertain—neither to add nor to subtract, neither to delete nor to distort.

* * *

> In our anxiety to effectuate the Congressional purpose of protecting the public, we must take care not to extend the scope of the statute beyond the point where Congress indicated it would stop.

It is respectfully urged that the statute be interpreted as it is written. It is the province of the law to define with clarity or how else can a lawyer advise a client. If it were the intention of the Constitution that the Court could rewrite a criminal statute by omitting a word then drafters wasted a lot of time prohibiting *ex post facto laws*.

Your orator emphatically urges that the *obiter dictum* of the *Saledonis* case not be followed. It is impossible to determine its application. As the Honorable Trial Court stated: "Undoubtedly *Saledonis* ignores the plain words of the statute by construing the words 'thereby knowingly' so as to relate back to the intent in the original inducement." The Court stated that except for the Saledonis case, "it is not unlikely that this Court would take a different view as to the defendant's motion." (Appellant's Appendix p. 8) Thus, the Trial Court and the Circuit Court seem to indicate that the Judiciary can successfully amend a statute. It is respectfully submitted that Congress should amend its own statutes if it wants so to do.

## CONCLUSION

The ruling below injects uncertainty and inconsistencies into the interpretation of the Mann Act. For over fifty years everyone assumed that the government must prove

under 18 U.S.C.A. §2422 that the defendent either directed or knew how the victim would travel whether by common carrier or private conveyance. Now on the basis of a decision of another Circuit where no facts or stenographic report was available, the Fourth Circuit has seen fit to upset a construction previously accepted everywhere. If the present case were allowed to stand, then it would be an invitation for every Court in the land to engage in judicial legislation.

Respectfully submitted,

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# UNITED STATES COURT OF APPEALS
## FOR THE FOURTH CIRCUIT

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No. 7943.

---

CATHERINE LOUISE HARMS
and
RUTH TWISDALE COUSINS,
Appellants,

*versus*

UNITED STATES OF AMERICA,
Appellee.

---

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT NORFOLK.
WALTER E. HOFFMAN, DISTRICT JUDGE.

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(Argued October 7, 1959. Decided November 20, 1959.)

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Before HAYNSWORTH and BOREMAN, Circuit Judges, and FIELD, District Judge.

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Robert G. Doumar and Frederick T. Stant for Appellants, and John M. Hollis, United States Attorney, for Appellee.

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FIELD, District Judge:

Appellants, Harms and Cousins, who are sisters, along with one, Connie Jean Day, were named as defendants in a five count indictment charging violations of the White Slave Traffic Act. Harms was charged in each of the first four counts with substantive offenses, the first count charging her with violation of 18 U.S.C. 2423, involving a minor female, Sandra Lee Ulrich. The second count charged her with a violation of 18 U S.C. 2422, alleging the inducement of Josephine Bruno. The third and fourth counts charged similar violations of 18 U.S.C. 2422, involving Linda Fay Ponder and a woman named therein as Ann Miller, respectively.

The fifth count which named Cousins and Day, along with Harms, as defendants, charged a conspiracy under 18 U.S.C. 371 to commit offenses in violation of the sections above referred to covering the period from November, 1955, to the date of the indictment.

At the trial, the Court acquitted the defendant Harms on the first count of the indictment upon the motion of the Government. At the conclusion of the Government's evidence, the Court granted defendant's motion for judgment of acquittal as to the fourth count as well as the motion for acquittal of the third defendant, Connie Jean Day, on the fifth count.

The jury returned a verdict of guilty on the second, third and fifth counts as to the defendant, Harms, and a verdict of guilty on the fifth count as to the defendant, Cousins. The Court denied appellant's motion to set aside the verdict and entered judgment of conviction of both defendants from which they have appealed.

With reference to the conviction of the appellant Harms on the second count, it is contended that there was not sufficient evidence to show that Harms knowingly exercised the requisite persuasion or inducement of Bruno to travel in interstate commerce. It is further contended that it was essential that the Government show that Harms either directed or knew that the victim, Bruno, would travel by common carrier. The evidence indicated that Bruno and Harms had become acquainted in 1955 and from that time up until January, 1957, Bruno had worked as a prostitute for Harms in Norfolk on several occasions. In November, 1956, Bruno left Norfolk to return to New Jersey with the understanding that she might return to Norfolk to resume her work there in January. On January 2 or 3, 1957, Harms made a telephone call to Bruno in Atlantic City, New Jersey, asking her to return to Norfolk and it was agreed that Bruno would come to Norfolk on January 7, 1957. On that date, Bruno traveled to Norfolk by interstate air line carrier, and, after her arrival, engaged in acts of prostitution in establishments maintained by Harms.

Under this evidence, we feel that the conviction of Harms on the second count unquestionably should be affirmed. The evidence set out above of the telephone invitation from Harms to Bruno and her response in making the interstate trip was sufficient to sustain the jury's finding that Harms effectually induced or persuaded Bruno to make the trip. McGuire v. United States 152 F. 2d 577, LaPage v. United States, 146 F. 2d 536. The fact that Bruno had previously expressed the desire to return to Norfolk or that she paid her own fare, is immaterial in view of the other evidence and the jury's finding thereon. United States v. Reed 96 F. 2d 785.

Nor do we feel that it was essential that the Government show that Harms directed or knew that Bruno would travel by interstate carrier. Having shown the knowing inducement or persuasion of Bruno to come from New Jersey to Virginia and the fact of the resultant trip by interstate carrier, the Government had covered the essential elements necessary to justify a conviction under Section 2422. It was not necessary for the Government to go further and attempt to show that Harms knowingly caused the victim to travel by common carrier either by direction or knowledge that the victim, Bruno, would use that mode of transportation. "Cause" is a word of very broad import and its meaning is generally known. See United States v. Kenofskey 243 U.S. 440. The knowing persuasion to make the interstate trip, of course, must be shown with some degree of particularity. but once the knowing persuasion has been shown, if the trip by interstate carrier follows, the offense is complete. In considering the comparable statute (18 U.S.C. 399) prior to the revision of the Criminal Code in the case of United States v. Saledonis, 93 F. 2d 302, the Court stated:

> "It is also suggested that there must be some direct act showing an intent on the part of the inducer that the transportation shall be by common carrier. This section does not say so, but plainly says that one who induces and who shall 'thereby knowingly cause' interstate commerce by common carrier is guilty of the offense if such transportation follows: An affirmative directive act is not involved. The inducement in and of itself, without consideration of intent and with no further direct act, is the moving cause of what follows.

> The inducement may be any offer sufficient to cause the woman to respond. The inducement sets in motion the successive acts that constitute the crime. It is unnecessary to show control of the medium of transportation by the inducer. It is sufficient if the accused knows or should have known that interstate transportation by common carrier would reasonably result and if it does."

We agree with the above language to the effect that the requisite inducement is any offer sufficient to cause the woman to respond, and that since the appellant knowingly induced or persuaded Bruno to make the trip then she "knowingly caused" Bruno to travel by interstate carrier within the meaning of the statute.

The evidence with respect to the third count involving Linda Fay Ponder presents a different situation. As to this count the evidence shows that sometime prior to January 21, 1957, Ponder made a call from Detroit, Michigan, to Harms in Norfolk, asking Harms if she could come to Norfolk to work for her as a prostitute. After questioning her in regard to her age and appearance, Harms agreed that she would have a place for Ponder. Ponder later called Harms again, asking if Ann Miller could come with her, to which Harms agreed. Both Ponder and Miller traveled to Norfolk by interstate air line carrier on January 21, 1957. Upon their arrival at the Norfolk Airport, Ponder called Harms and pursuant to that call a meeting place was arranged and thereafter both Ponder and Miller engaged in acts of prostitution in Harms' establishment.

The evidence indicated that Harms knew neither of these women prior to the time of their arrival in Norfolk. The evidence also shows that both telephone calls were initiated

by Ponder and that it was her suggestion that both she and Miller come to work for Harms. The evidence fails to show that Harms knew that Ponder was making the call from any point outside of the State of Virginia. While we do not know that Harms would have been deterred or acted otherwise than she did had she known that Ponder and Miller were calling from Detroit, nevertheless we feel that the absence of evidence of such knowledge on the part of Harms has an important bearing on the validity of the conviction on this third count. The constitutionality of the White Slave Traffic Act has been upheld as a proper exercise of the powers of Congress solely under the commerce clause of the Federal Constitution. Hoke v. United States 277 U. S. 308. Accordingly, the gravamen of the offense is the inducement or persuasion to travel in interstate commerce for the immoral purposes set forth in the Act. The immoral acts or pursuits in themselves are exclusively the subject of regulation under the police power of the state where they are committed. The statute makes the intent to transport the woman in interstate commerce for such immoral purposes an element of the crime. United States v. Grace 73 F. 2d 294. Sloan v. United States 287 F. 91. It seems clear that the Government must present evidence showing the intent of the defendant in regard to the interstate aspect of the offense. This intent of the defendant must necessarily exist prior to, or concurrent with the interstate trip of the victim. Alpert v. United States 12 F. 2d 352. United States v. Grace, supra. With respect to the third count, there is no evidence which would show that Harms had knowledge that she was inducing or persuading Ponder to make an interstate trip to take her place in the admittedly illegal establishment of Harms. The record shows that the District Judge granted a motion for judg-

ment of acquittal with respect to the fourth count involving Ann Miller, and it is our opinion that the Court should likewise have granted the motion for judgment of acquittal on the third count for the reason set forth above.

With respect to the fifth count charging Harms, Cousins and Day with conspiracy, as we have already noted the District Court granted a motion for judgment of acquittal as to the defendant, Day. While the indictment in the conspiracy count specified the period from November, 1955, to the date of the indictment, as a result of the disposition of the first count, the District Judge in his charge to the jury indicated that the conspiracy, if any, did not take place until shortly prior to January 7, 1957. We think the Court acted correctly in so confining the period of the alleged conspiracy and the question before us is whether the evidence supports the jury's verdict on the conspiracy count pursuant to such charge.

The evidence shows that Harms and Cousins are sisters and were together in a house of prostitution in Norfolk in 1954. However, Cousins moved to Florida in the early part of 1955, and with the exception of "two or three visits a year," did not return to Norfolk until sometime after January 1, 1957. The evidence further shows that whenever she came to Norfolk during that period she stayed at the residence of her sister, Harms.

Unquestionably, Cousins evidenced the same lack of moral fibre as her sister, and was a willing helper to her sister in running her establishments when the occasion demanded. Her assistance in a number of instances is clearly shown by the evidence. It is equally clear, however, that Harms was the "madam" and controlled both the purse and policy of the business. The maid, Rebbie Knight, in

speaking of Cousins' activities, stated, "Well, she would maybe try to give her sister a hand, but it was her sister's business."

Undoubtedly, there was a sufficiency of evidence to convict Cousins of conspiracy to maintain a house of prostitution, but it does not necessarily follow that the evidence was sufficient on the charge of conspiracy to violate the White Slave Act in this case. Concededly, Cousins was absent from active participation on the Norfolk scene from early 1955 until after January 2, 1957. The government agent who had Harms under surveillance during that period testified that he had never seen Cousins during that entire time nor until sometime after January, 1957. She was not in Norfolk at the time of the call from Harms to Bruno. Under the circumstances, it would appear on the evidence that the conspiracy necessarily had to come into being, if at all, subsequent to the telephone call to Bruno and prior to her arrival at Norfolk Airport on January 7th. There is no direct evidence of any agreement between Cousins and Harms, and, accordingly, the conviction of Harms on the alleged conspiracy rests solely on inferences drawn from her overt acts together with the other evidence presented in this case.

The overt acts of Cousins placed her under a high degree of suspicion. However, proof of overt acts in themselves is not sufficient, for it must be established that the conspiracy or agreement which is charged to have existed and which is the gist of the offense had been formed before and was existing at the time of the commission of the overt act or acts. Dahly v. United States 50 F. 2d 237. United States v. Grossman 55 F. 2d 408. There must be proof of the unlawful agreement, either expressed or implied, and participa-

tion with knowledge of the agreement. Davidson v. United States 61 F. 2d 250. The agreement of conspiracy may, of course, be proven and established by circumstantial evidence. United States v. Glasser 315 U.S. 60. Clune v. United States 159 U.S. 590. Even though it is not necessary that such circumstantial evidence exclude every reasonable hypothesis consistent with innocence,[1] nevertheless, the evidence should be sufficient to prove this element of the crime beyond a reasonable doubt. As was stated in Dahly v. United States, supra, "circumstantial evidence is equally available with direct evidence to prove the conspiracy, but suspicion or conjecture cannot take the place of evidence. Guilt must be established beyond a reasonable doubt, and, where the evidence is as consistent with innocence as with guilt, no conviction can properly be had."

When the evidence with respect to Cousins is appraised in this light, it occurs to us that it is not of such convincing degree as to warrant more than a mere probability or conjecture of guilt. With a total absence of direct proof of the essential agreement between Cousins and Harms, we feel that the inference drawn from the evidence with regard to Cousins on the fifth count is "so tenuous as to amount to mere speculation." See Call v. United States 265 F. 2d 167. We do not believe that the sum of the circumstantial elements in the record in this case is sufficient to support the conviction of the defendant Cousins on the conspiracy count; and since a person cannot conspire with himself or herself, it necessarily follows that the motion of both defendants as to the fifth count should have been granted.

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[1] Holland v. United States 348 U.S. 121

Our conclusion requires the reversal of the conviction of Cousins and her discharge from further proceedings. Harms, however, received a general sentence of thirty months and a fine of $1,000.00 imposed jointly upon counts two, three and five. We have found that she was improperly convicted on counts three and five. However, the penalty imposed upon her does not exceed that which might have been imposed under the second count had it stood alone. The conviction on the second count being sufficient in itself to support the sentence, we must affirm the conviction of Harms. Claassen v. United States 142 U.S. 140, Whitfield v. Ohio 297 U.S. 431.

*Affirmed in part, reversed in part and remanded.*

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No. 602

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# In the Supreme Court of the United States

OCTOBER TERM, 1959

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CATHERINE LOUISE HARMS, *Petitioner*

v.

UNITED STATES OF AMERICA

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

---

## BRIEF FOR THE UNITED STATES IN OPPOSITION

---

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## BRIEF FOR THE UNITED STATES IN OPPOSITION

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### OPINION BELOW

The opinion of the court of appeals (Pet. 22-30) has not been reported.

### JURISDICTION

The judgment of the court of appeals was entered on November 20, 1959. The petition for a writ of certiorari was filed on December 21, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## QUESTION PRESENTED

Whether evidence that petitioner induced a girl, then in New Jersey, to come to Virginia for purposes of prostitution supports the finding, implicit in the verdict of guilt, that she "thereby knowingly cause[d]" the girl to travel by common carrier.

## STATUTE INVOLVED

18 U.S.C. 2422 provides:

> Whoever knowingly persuades, induces, entices, or coerces any woman or girl to go from one place to another in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose on the part of such person that such woman or girl shall engage in the practice of prostitution or debauchery, or any other immoral practice, whether with or without her consent, and thereby knowingly causes such woman or girl to go and to be carried or transported as a passenger upon the line or route of any common carrier or carriers in interstate or foreign commerce, or in the District of Columbia or in any Territory or Possession of the United States, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

## STATEMENT

Petitioner seeks review of the judgment of the court of appeals affirming her conviction on the second count of the indictment, which charged that she knowingly induced Josephine Bruno to travel in interstate commerce for purposes of prostitution, thereby knowingly causing such woman to be transported by common car-

rier, in violation of 18 U.S.C. 2422, *supra*. Petitioner was sentenced to 30 months' imprisonment, and fined $1,000 on that count.

The evidence showed that petitioner called Miss Bruno, in Atlantic City, New Jersey, from Norfolk, Virginia, on January 2 or 3, 1957 and told her to come to work (Tr. 64-65).[1] Miss Bruno, who had worked for petitioner before, said that she could not come that week but would come the following Monday (Tr. 65, 66). On January 7, 1957 Miss Bruno went by plane from Atlantic City to Norfolk (Tr. 63, 65). She called petitioner from the airport and was told where to go (Tr. 68-69). Thereafter she worked as a prostitute, giving half her earnings to petitioner or someone acting for petitioner (Tr. 71-72, 78-80). The judge charged the jury in part (Tr. 372):

> * * * The inducement sets in motion the successive acts which constitute the crime. If there was sufficient inducement rendered knowingly by the defendant Harms, and that defendant knew or should have known that interstate transportation by a common carrier of the particular prostitute involved would necessarily follow, it is sufficient to sustain a conviction if the prostitute in question thereafter engaged in her profession subsequent to any actual trip taken in interstate commerce for that purpose. * * *

## ARGUMENT

Petitioner admits, for the purposes of the petition, that the evidence establishes that (1) she induced Miss Bruno to travel in interstate commerce in order to engage in prostitution and (2) Miss Bruno did travel by

[1] We are filing a copy of the transcript with the Clerk of the Court.

common carrier. Petitioner argues that nevertheless an offense under Section 2422 was not established because it was not shown that petitioner caused Miss Bruno to travel by common carrier, rather than by some other means of transportation. The court of appeals held (Pet. 24):

> * * * Having shown the knowing inducement or persuasion of Bruno to come from New Jersey to Virginia and the fact of the resultant trip by interstate carrier, the Government had covered the essential elements necessary to justify a conviction under Section 2422. It was not necessary for the Government to go further and attempt to show that Harms knowingly caused the victim to travel by common carrier either by direction or knowledge that the victim, Bruno, would use that mode of transportation. "Cause" is a word of very broad import and its meaning is generally known. See United States v. Kenofskey 243 U.S. 440. The knowing persuasion to make the interstate trip, of course, must be shown with some degree of particularity, but once the knowing persuasion has been shown, if the trip by interstate carrier follows, the offense is complete. * * *

This ruling is in accord with the decision of the Second Circuit in *United States* v. *Saledonis*, 93 F. 2d 302, rendered in 1937 before reenactment of the present statute in the revision of the Criminal Code in 1948. The continuation of the same language in the 1948 revision suggests that the *Saledonis* interpretation was accepted as a proper one.

The word "cause" is one of broad import. *United States* v. *Kenofskey*, 243 U.S. 440. In *Pereira* v.

*United States*, 347 U.S. 1, 8-9, this Court said, with respect to causing the use of the mails:[2]

> Where one does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended, then he "causes" the mails to be used." * * *

Under the evidence here, the jury could infer that the use of a common carrier by Miss Bruno was reasonably foreseeable, particularly since Miss Bruno had told petitioner she could not come the week petitioner called but would come the following Monday. Petitioner was therefore properly found guilty under 18 U.S.C. 2422.

## CONCLUSION

The decision below is correct and involves no conflict of decisions or issue of importance. It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
*Solicitor General.*

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BEATRICE ROSENBERG,
*Attorney.*

JANUARY 1960.

[2] The Court was there speaking of the phrase "knowingly cause". 18 U.S.C. 1341 speaks in terms of "knowingly cause" and 18 U.S.C. 2 (the aider and abettor statute) in terms of "willfully cause."

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